

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

NO. 1:20-cr-01954-KWR

PETER GARCIA,

Defendant.

**UNITED STATES' OPPOSED MOTION FOR
PRELIMINARY ORDER OF FORFEITURE**

The United States, pursuant to Fed. R. Crim. P. 32.2(b), respectfully submits its Opposed Motion for a Preliminary Order of Forfeiture regarding the following property:

A. A Smith and Wesson, M&P Shield, 9mm caliber pistol, SN: JEU6675; and

B. Ammunition.

(hereafter collectively referred to as "Certain Subject Property").

The grounds for this motion are as follows:

1. The United States and Defendant Peter Garcia entered into a Plea Agreement (Doc. 49), in which Defendant Garcia pleaded guilty to the Indictment, charging Felon in Possession of a Firearm and Ammunition in violation of 18 U.S.C. § § 922(g)(1) and 924. In paragraphs 16-20 of the Plea Agreement, Defendant Garcia agreed to forfeit all right, title, and interest in the Certain Subject Property.

2. Based upon the plea agreement, the United States has established the requisite nexus between the Certain Subject Property and the offenses to which the Defendant has pleaded guilty. Accordingly, the Certain Subject Property is subject to forfeiture to the United States pursuant to 18 U.S.C. § 924(d), 28 U.S.C. § 2461(c)) and Fed. R. Crim. P. 32.2(b)(1).

3. Upon the issuance of a Preliminary Order of Forfeiture and pursuant to 21 U.S.C. § 853(n), the United States will publish notice of the Preliminary Order on the government's official internet website, www.forfeiture.gov, for at least 30 consecutive days. The United States may also, to the extent practicable, provide direct written notice to any person, other than the Defendant, known to have alleged an interest in the Certain Subject Property, as a substitute for published notice as to those persons so notified. The publication and any written notice will advise that any person, other than the Defendant, having or claiming a legal interest in the Certain Subject Property must file a petition with the Court contesting the forfeiture in accordance with 21 U.S.C. § 853(n) and Rule 32.2(c) within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever is earlier. 21 U.S.C. § 853(n)(2). The notice will also state that the petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title or interest in the Certain Subject Property and any additional facts supporting the petitioner's claim and the relief sought. 21 U.S.C. § 853(n)(3).

4. In accordance with the provisions of 21 U.S.C. § 853 and Fed. R. Crim. P. 32.2(b)(3), the United States requests that it be permitted to seize the Certain Subject Property whether held by the Defendant or a third party, and to undertake whatever discovery is necessary to identify, locate, or dispose of property subject to forfeiture, or substitute assets for such property.

5. Defendant has not responded to United States request for approval of this motion.

WHEREFORE, the United States respectfully requests this Court to enter a Preliminary Order of Forfeiture pursuant to 18 U.S.C. § 924(d)(1) and Fed. R. Crim. P. 32.2(b)(1), which forfeits all right, title, and interest of Defendant Peter Garcia in the Certain Subject Property. The

United States further requests that the order authorize the United States (or a designee) to seize and maintain custody of the Certain Subject Property, authorize the United States to begin proceedings consistent with any statutory requirements pertaining to ancillary hearings and the rights of third parties, and to dispose of it in accordance with law.

Respectfully submitted,

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United States Attorney

Electronically submitted July 7, 2022
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I HEREBY CERTIFY that I filed the foregoing electronically through the CM/ECF system, which caused counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/S/ Stephen R. Kotz
STEPHEN R. KOTZ
Assistant U.S. Attorney